

### **REMARKS**

Receipt of the office action mailed November 2, 2007, is acknowledged. Claims 1-8, 11-16, 19, and 20 are pending in the application. Claims 1, 2-4, 6, 8, 11, 13, 14, 16, 19, and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,265,995 (Beck) in view of U.S. Patent No. 5,108,253 (Kobayashi) and U.S. Patent No. 4,372,341 (Crawley). Claims 5, 7, and 12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Beck in view of Kobayashi and Crawley and further in view of U.S. Patent Publication No. 2003/0156937 (Brown). Claim 15 is rejected under 35 U.S.C. § 103(a) as unpatentable over Beck in view of Kobayashi and Crawley and further in view of U.S. Patent No. 4,280,783 (Hayward). Claims 19 and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Beck in view of Kobayashi and U.S. Patent No. 5,193,658 (Tellden).

Applicant submits herewith for consideration the declaration of Simon John Ratcliffe (Ratcliffe Declaration) pursuant to 37 C.F.R. 1.132.

Applicant respectfully traverses the rejection of claims 1-8, 11-16, 19, and 20. Applicant respectfully requests reconsideration and withdrawal of these rejections.

With or without the attached declaration, there can be no *prima facie* case of obviousness based on the cited references. None of the cited references disclose or suggest a machine having stops to engage the superstructure and prevent it from rotating through a range of no more than 300° (claim 1) or less than 360° (claim 19).

Independent claim 1 recites, in relevant part, an excavating and loading machine having a superstructure that “is arranged to contact stops to limit the rotation of the superstructure to no more than 300° of rotation.” Similarly, independent claim 19 recites an excavating and loading machine with a superstructure that is “arranged to abut stops in order to limit the range of rotation of the superstructure relative to the body to less than 360°.

Beck does not disclose or suggest a cab with limited rotation. By comparison, as the examiner has agreed, Beck expressly teaches that the cab must be able to rotate through a full range of 360°. The Examiner incorrectly characterizes Beck as disclosing or suggesting an excavating and loading machine with a rotatable cab that rotates less than 360°. Beck discloses excavators, with full 360° cab rotation, and front end loaders, with stationary cabs.

However, Beck fails to disclose or even suggest any type of construction machine, much less a combined excavating and loading machine, that limits cab rotation to less than 360°. In fact, the primary object of Beck is to provide “an improved construction machinery vehicle that combines a front end loader attachment with a backhoe attachment connected to a cab that rotates a complete revolution of three hundred sixty degrees.” Beck, col. 1, lines 65-68, to col. 2, lines 1-2. As stated in the Ratcliffe Declaration, given the primary object of Beck and the failure of Beck to describe any construction machine with a rotatable cab with less than 360° cab rotation, there is no suggestion in Beck that an excavating and loading machine can have rotatable cab with less than full 360° cab rotation. Ratcliffe Declaration, page 2, paragraph 5. Therefore, Beck does not disclose or suggest a construction machine with a rotatable cab that is limited by stops to a rotation of at least less than 360°.

Moreover, one of ordinary skill in the art would not be motivated or find it beneficial to modify Beck to provide for the stops of each of claims 1 and 19 because such modification would require one to destroy or disregard the expressly taught sensors 108 of Beck. Specifically, Beck teaches that at least two sensors 108 are connected to the hydraulic control system to disable the control system and prevent further cab rotation if the backhoe is about to collide with the front end loader assembly and/or the engine enclosure 18 and the main frame 28. Beck, col. 5, lines 44-55. Thus, Beck specifically teaches the sensors 108 to prevent a collision with the front end loader assembly without permanently restricting the rotation of the cab to less than 360°. One of ordinary skill in the art would not be motivated to modify Beck in a manner that would render the sensors 108 meaningless. Accordingly, there is no suggestion to modify Beck to provide for the stops of the claimed invention.

Furthermore, the primary object of Beck is to provide “an improved construction machinery vehicle that combines a front end loader attachment with a backhoe attachment connected to *a cab that rotates a complete revolution of three hundred sixty degrees.*” One of ordinary skill in the art would not be motivated to modify Beck in a manner that would render Beck unsuited for its intended purpose of providing “a cab that rotates a complete revolution of three hundred sixty degrees.” Beck, col. 1, lines 65-68, to col. 2, lines 1-2. Therefore, one of ordinary skill in the art would not be motivated to modify Beck to provide for the stops of claims 1 and 19. Thus, Beck fails to disclose or suggest each and every

element of the claimed invention. Accordingly, no *prima facie* case of obviousness can be based upon Beck. Claims 1 and 19 are, therefore, allowable.

Claims 2-8 and 11-16 depend from independent claim 1. Claim 20 depends from independent claim 19. Claims 1 and 19 are shown above to be allowable, therefore, claims 2-8, 11-16, and 20 are also allowable.

Even if, *arguendo*, a *prima facie* case of obviousness has been made, the rejections under 35 U.S.C. § 103(a) are effectively rebutted by the Ratcliffe Declaration. Secondary considerations of nonobviousness effectively rebut claims of obviousness. As outlined in *Graham v. John Deere Co.*, 381 U.S. 1 (1966), secondary considerations include filling a long felt need and failure of others to solve the problem.

Mr. Ratcliffe states in the attached declaration that the claimed invention has fulfilled a long felt need in the construction machinery industry to have a combined excavating and loading machine capable of excavating a trench close to an obstacle without obstructing the operator's visibility. Conventional excavating and loading machines tend to be inferior to dedicated excavating machines because of design compromises made to combine the excavating and loading equipment into a single machine. Particularly, the body and wheeled ground engaging structure of the combined excavating and loading machine tends to prevent excavating a trench near an obstacle, such as a wall. Prior art machines have failed to solve this problem. Prior art machines attempt to resolve the problem by mounting the excavating arm on a carriage that extends side to side. However, the side to side movement of the carriage and arm obstructs the operator's view. Specification, page 1, paragraph 5. "The obstruction of the operator's view renders these machines inferior to the claimed invention." Ratcliffe Declaration, page 3, paragraph 8.

The claimed invention solves this problem and fulfills the long standing need in the industry by providing an excavating arm that is movable together with the cab to enable excavating operations to be carried out in a wide variety of positions, without obstructing the operator's view.

It is respectfully submitted that this response traverses all of the Examiner's rejections to the application as originally filed. The response does not raise new issues that would

require further consideration or search. Reconsideration and withdrawal of the rejections are respectfully requested.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

Dated: March 24, 2008

Respectfully submitted,

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